

**Walker County Medical Center, Inc. and Alabama State Nurses' Association. Case 10-CA-17150**

March 12, 1982

**DECISION AND ORDER**

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

Upon a charge filed on July 6, 1981, by Alabama State Nurses' Association, herein called the Union, and duly served Walker County Medical Center, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 10, issued a complaint on July 22, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on June 10, 1981, following a Board election in Case 10-RC-12359, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about June 30, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On July 30, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On November 2, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on November 4, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Na-

tional Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

In its answer to the complaint and response to the Notice To Show Cause, Respondent admits its refusal to bargain, but denies that it thereby violated Section 8(a)(5) and (1) of the Act, arguing that the election held on June 2, 1981, should have been set aside because the Regional Director's Decision and Direction of Election conflicted with decisions of the Board and various courts of appeals. Respondent also asserts that the instant proceeding violates the Administrative Procedures Act and that a hearing should be held before the full Board to consider this case. Finally, Respondent contends that the Regional Director and the Board erred in failing to review the entire record during the previous proceedings involving the matters in dispute.

A review of the record herein, including the record in Case 10-RC-12359, shows that on May 4, 1981, the Regional Director issued a Decision and Direction of Election in which he found that the Alabama State Nurses' Association (herein called the Union) was a labor organization within the meaning of Section 2(5) of the Act and that all registered nurses, including assistant unit coordinators, charge nurses, and team leaders employed by Respondent at its hospital located in Jasper, Alabama, but excluding all other employees, unit coordinators, the director of nursing, assistant director of nursing, house supervisors, guards and supervisors as defined in the Act, constitute an appropriate unit. In so doing, he included in the unit the assistant unit coordinators and charge nurses whose authority he found was "an exercise of judgment incidental to the treatment of patients and not an exercise of supervisory authority." However, he excluded from the unit the unit coordinators who he found possessed the authority to discharge and discipline employees and to assign work and breaks. With regard to the Union, the Regional Director found that, while supervisors were admitted to membership and served on the board of directors, "no supervisors or employees of the Employer are serving on the Board of Directors and it is uncontroverted that should the Petitioner be certified, goals and negotiations involving the unit herein would be determined and pursued solely by members of the unit." He further concluded that "there is no clear and present danger of conflict of interest between management's objectives and employee representational concerns," because it was unrefut-

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 10-RC-12359, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), *enfd.* 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), *enfd.* 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

ed that supervisors would not be permitted to participate in the internal affairs of the local.

On May 18, 1981, Respondent filed a request for review contending that the record supported its assertion that assistant unit coordinators and charge nurses are supervisors and therefore should be excluded from the unit. Respondent further alleges that the Regional Director erred in not finding that the presence of supervisors on the Union's board of directors and the admittance of supervisors into union membership (including supervisors at Respondent) presented a conflict of interest which prevented the Union from representing fairly the unit employees. On June 1, 1981, the Board denied Respondent's request for review. The representation election was held on June 2, 1981, and a majority of the unit employees designated the Union as their representative for the purpose of collective bargaining. The Union was certified by the Regional Director on June 10, 1981.

By letter dated June 18, 1981, the Union requested a meeting with Respondent to bargain with respect to rates of pay, wages, hours of employment, or other conditions of employment. By letter dated June 30, 1981, Respondent stated that it would meet with the Union for the purposes of collective bargaining only after the appropriate U.S. court of appeals upheld the Board's certification of the Union. In its answer to the complaint, Respondent admits that it refused and is continuing to refuse to recognize and bargain collectively with the Union because the certification is invalid. It thus appears Respondent is attempting to raise issues in this proceeding that were raised, considered, and resolved in the underlying representation case.

Further, we find no merit to Respondent's contention that the Board erred in failing to review the entire record in determining the issues in Case 10-RC-12359. The Regional Director's Decision and Direction of Election was a final decision on the record, subject to discretionary review by the Board, as authorized by Section 3(b) of the Act. Respondent challenged this decision by timely filing a request for review with the Board. Under Section 102.67(d) of the Board's Rules and Regulations, "any request for review must be a self-contained document enabling the Board to rule on the basis of its contents without the necessity of recourse to the record; however, the Board may, in its discretion, examine the record in evaluating the request." Where, as here, it appears from the Regional Director's decision and the request for review that no substantial and material issues of fact exist, we find that it is within the Board's discretion to deny the request solely on the basis of those documents. This finding is supported by the

Board's policy of expeditiously resolving questions concerning representation.

Respondent's reliance on *N.L.R.B. v. Decibel Products, Inc.*, 657 F.2d 727 (5th Cir. 1981), is misplaced with respect to the Board's review obligations in a representation proceeding where a regional director makes a final decision on the record. *Decibel Products* dealt with the type of representation proceeding where the Board itself makes the final decision on the record.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.<sup>2</sup>

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF RESPONDENT

Respondent is an Alabama corporation with an office and place of business at Jasper, Alabama, where it is engaged in the operation of a private medical center. During the past calendar year, a representative period, it received gross revenues in excess of \$250,000 and received at its Jasper, Alabama, institution supplies in excess of \$5,000 directly from suppliers located outside the State of Alabama.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

<sup>2</sup> See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(d) and 102.69(c).

## II. THE LABOR ORGANIZATION INVOLVED

Alabama State Nurses' Association is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

### A. *The Representation Proceeding*

#### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All registered nurses, including assistant unit coordinators, charge nurses and team leaders employed by Respondent at its hospital located in Jasper, Alabama, but excluding all other employees, unit coordinators, the director of nursing, assistant director of nursing, house supervisors, guards and supervisors as defined in the Act.

#### 2. The certification

On June 2, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 10, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on June 10, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

### B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about June 18, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about June 30, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since June 30, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor prac-

tices within the meaning of Section 8(a)(5) and (1) of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

## CONCLUSIONS OF LAW

1. Walker County Medical Center, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Alabama State Nurses' Association is a labor organization within the meaning of Section 2(5) of the Act.

3. All registered nurses, including assistant unit coordinators, charge nurses and team leaders employed by Respondent at its hospital located in Jasper, Alabama, but excluding all other employees, unit coordinators, the director of nursing, assistant director of nursing, house supervisors, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collec-

tive bargaining within the meaning of Section 9(b) of the Act.

4. Since June 10, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about June 30, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Walker County Medical Center, Inc., Jasper, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Alabama State Nurses' Association as the exclusive bargaining representative of its employees in the following appropriate unit:

All registered nurses, including assistant unit coordinators, charge nurses and team leaders employed by Respondent at its hospital located in Jasper, Alabama, but excluding all other employees, unit coordinators, the director of nursing, assistant director of nursing, house supervisors, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Jasper, Alabama, facility copies of the attached notice marked "Appendix."<sup>3</sup> Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

<sup>3</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

### APPENDIX

#### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Alabama State Nurses' Association as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All registered nurses, including assistant unit coordinators, charge nurses and team leaders

employed by the Employer at its hospital located in Jasper, Alabama, but excluding all other employees, unit coordinators, the director of nursing, assistant director of nurs-

ing, house supervisors, guards and supervisors as defined in the Act.

WALKER COUNTY MEDICAL CENTER,  
INC.